APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER
BHATIA, AJAY M

ART UNIT	PAPER NUMBER
2145	

DATE MAILED: 09/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *15 January 2004*.

2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-40* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-40* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date *6/23/03*.

4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 29-36 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. A signals is a non-statutory invention.

Claims that recite nothing but the physical characteristics of a form of energy, such as a frequency, voltage, or the strength of a magnetic field, define energy or magnetism, per se, and as such are nonstatutory natural phenomena. O'Reilly, 56 U.S. (15 How.) at 112-14. Moreover, it does not appear that a claim reciting a signal encoded with functional descriptive material falls within any of the categories of patentable subject matter set forth in § 101.

First, a claimed signal is clearly not a "process" under § 101 because it is not a series of steps. The other three § 101 classes of machine, compositions of matter and manufactures "relate to structural entities and can be grouped as 'product' claims in order to contrast them with process claims." 1 D. Chisum, Patents § 1.02 (1994). The three product classes have traditionally required physical structure or material.

"The term machine includes every mechanical device or combination of mechanical device or combination of mechanical powers and devices to perform some function and produce a certain effect or result." Corning v. Burden, 56 U.S. (15 How.) 252, 267 (1854). A modern definition of machine would no doubt include electronic devices which

perform functions. Indeed, devices such as flip-flops and computers are referred to in computer science as sequential machines. A claimed signal has no physical structure, does not itself perform any useful, concrete and tangible result and, thus, does not fit within the definition of a machine.

A "composition of matter" "covers all compositions of two or more substances and includes all composite articles, whether they be results of chemical union, or of mechanical mixture, or whether they be gases, fluids, powders or solids." Shell Development Co. v. Watson, 149 F. Supp. 279, 280, 113 USPQ 265, 266 (D.D.C. 1957), aff'd, 252 F.2d 861, 116 USPQ 428 (D.C. Cir. 1958). A claimed signal is not matter, but a form of energy, and therefore is not a composition of matter.

The Supreme Court has read the term "manufacture" in accordance with its dictionary definition to mean "the production of articles for use from raw or prepared materials by giving to these materials new forms, qualities, properties, or combinations, whether by hand-labor or by machinery." Diamond v. Chakrabarty, 447 U.S. 303, 308, 206 USPQ 193, 196-97 (1980) (quoting American Fruit Growers, Inc. v. Brogdex Co., 283 U.S. 1, 11, 8 USPQ 131, 133 (1931), which, in turn, quotes the Century Dictionary). Other courts have applied similar definitions. See American Disappearing Bed Co. v. Arnaelsteen, 182 F. 324, 325 (9th Cir. 1910), cert. denied, 220 U.S. 622 (1911). These definitions require physical substance, which a claimed signal does not have. Congress can be presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change. Lorillard v. Pons, 434 U.S. 575, 580 (1978). Thus, Congress must be presumed to have been

aware of the interpretation of manufacture in American Fruit Growers when it passed

the 1952 Patent Act.

A manufacture is also defined as the residual class of product. 1. Chisum, § 1.02[3]

(citing W. Robinson, The Law of Patents for Useful Inventions 270 (1890)).

A product is a tangible physical article or object, some form of matter, which a signal is

not. That the other two product classes, machine and composition of matter, require

physical matter is evidence that a manufacture was also intended to require physical

matter. A signal, a form of energy, does not fall within either of the two definitions of

manufacture. Thus, a signal does not fall within one of the four statutory classes of §

101.

Applicant is suggested to review the interim guidelines in the Official Gazette Notices

dated 22 November 2005, under Guidelines for Subject Matter Eligibility.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2,6-8,23-25, 29-33, and 37-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Ueno et al. (U.S. Patent 5,991,811).

For claim 1, Ueno teaches, a method for managing admission of requests to a streaming media server,

the method comprising:

receiving a new request for a streaming media file to be served by a streaming media server; (Ueno, Col. 8 lines 1-5)

performing a resource availability check for the streaming media server to determine whether the streaming media server has sufficient available resources to service the new request; (Ueno, Col. 16 line 49 to Col. 17 line 26)

and performing a quality of service guarantee check for the streaming media server to determine whether acceptance of the new request will violate, at any point in the future, a desired quality of service provided by the streaming media server for any previously accepted requests. (Ueno, Col. 16 line 49 to Col. 17 line 26)

For claim 2, Ueno teaches, the method of claim 1 wherein said resource availability check comprises:

using a segment-based memory model to determine whether at least a portion of the

requested streaming media file is in the streaming media server's memory. (Ueno, Col.

11 lines 10-25, Col. 8 lines 1-11, Col. 16 line 49 to Col. 17 line 26)

For claim 6, Ueno teaches, the method of claim 1 wherein said resources comprise

memory resources and disk resources. (Ueno, Col. 11 lines 10-25, Col. 8 lines 1-11,

Col. 16 line 49 to Col. 17 line 26)

For claim 7, Ueno teaches, the method of claim 1 wherein said sufficient available

resources to service the new request comprises sufficient resources available so as not

to overload the streaming media server. (Ueno, Col. 11 lines 10-25, Col. 8 lines 1-11,

Col. 16 line 49 to Col. 17 line 26)

For claim 8, Ueno teaches, the method of claim 1 wherein said desired quality of service

comprises real-time delivery of streaming media files requested by said previously

accepted requests. (Ueno, Col. 11 lines 10-25, Col. 8 lines 1-11, Col. 16 line 49 to Col.

17 line 26)

For claim 23, Ueno teaches, a method comprising:

receiving, at a time T.sub.cur, a new request for a streaming file to be served by

a media server; (Ueno, Col. 9 line 63 to Col. 10 line 5)

creating a segment-based model of the media server's memory as of time

T.sub.cur; (Ueno, Col. 11 lines 10-25, Col. 8 lines 1-11, Col. 16 line 49 to Col. 17 line

26)

and based at least in part on the segment-based model of the media server's

memory, determining whether to accept the received request for service by the media

server. (Ueno, Col. 11 lines 10-25, Col. 8 lines 1-11, Col. 16 line 49 to Col. 17 line 26)

For claim 24, Ueno teaches, the method of claim 23 wherein said segment-based model

of the media server's memory comprises (a) identification of unique segments of

streaming files previously accessed by clients of the media server and (b) identification

of corresponding timestamps of most recent accesses of each unique segment. (Ueno,

Col. 9 line 63 to Col. 10 line 5)

For claim 25, Ueno teaches, the method of claim 23 wherein said determining whether

to accept the

received request for service by the media server comprises:

determining whether the received request can be serviced by the media server

without overloading the media server. (Ueno, Col. 11 lines 10-25, Col. 8 lines 1-11, Col.

16 line 49 to Col. 17 line 26)

For claim 29, Ueno teaches, computer-executable software stored to a computer-

readable medium, the

computer-executable software comprising:

code for creating a segment-based model of a media server's memory; (Ueno,

Col. 11 lines 10-25, Col. 8 lines 1-11, Col. 16 line 49 to Col. 17 line 26)

and code for determining whether to serve a requested streaming file from the

media server based at least in part on the segment-based model of the media server's

memory. (Ueno, Col. 11 lines 10-25, Col. 8 lines 1-11, Col. 16 line 49 to Col. 17 line 26)

For claim 30, Ueno teaches, the computer-executable software code of claim 29 further

comprising:

code for receiving a request for said streaming file. (Ueno, Col. 7 lines 61-67)

For claim 31, Ueno teaches, the computer-executable software code of claim 30 further

comprising:

code, responsive to receiving said request, for determining whether to accept the

request for service by the media server. (Ueno,)

For claim 32, Ueno teaches, the computer-executable software code of claim 31

wherein said code for

determining whether to accept the request for service by the media server

comprises:

code for determining whether the request can be serviced by the media server

without overloading the media server. (Ueno, Col. 9 line 62 to Col. 10 line 6)

For claim 33, Ueno teaches, the computer-executable software code of claim 29

wherein said segment-based model of the media server's memory comprises (a)

identification of unique segments of streaming files previously accessed by clients of the

media server and (b) identification of corresponding timestamps of most recent

accesses of each unique segment. (Ueno, Col. 9 line 63 to Col. 10 line 5)

For claim 37, Ueno teaches, a cost-aware admission control system comprising:

means for receiving, at a time T.sub.cur, a new request for a streaming file to be

served by a media

server; (Ueno, Col. 9 line 63 to Col. 10 line 5)

means for creating a segment-based model of the media server's memory as of

time T.sub.cur; (Ueno, Col. 11 lines 10-25, Col. 8 lines 1-11, Col. 16 line 49 to Col. 17

line 26)

and means for determining, based at least in part on the segment-based model

of the media server's memory, whether to accept the

received request for service by the media server. (Ueno, Col. 11 lines 10-25, Col. 8

lines 1-11, Col. 16 line 49 to Col. 17 line 26)

For claim 38, Ueno teaches, the cost-aware admission control system of claim 37

wherein said

segment-based model of the media server's memory comprises (a) identification of

unique segments of streaming files previously accessed by clients of the media server

and (b) identification of corresponding timestamps of most recent accesses of each

unique segment. (Ueno, Col. 9 line 63 to Col. 10 line 5)

For claim 39, Ueno teaches, the cost-aware admission control system of claim 37

wherein said means for

determining whether to accept the received request for service by the media

server comprises:

      means for determining whether the received request can be serviced by the

media server without overloading the media server. (Ueno, Col. 9 line 62 to Col. 10 line

6)

      Claims 11, 14, 15, 17, and 20-22 are rejected under 35 U.S.C. 102(e) as being

anticipated by Krishnamurthy et al. (U.S. Patent 6,910,024)

For claim 11, Krishnamurthy teaches, a method for managing admission of requests to

a media server, the method

comprising:

receiving a new request for a streaming file to be served by a media server; (Krishnamurthy, Col. 7 lines 60-67)

determining a cost to the media server for serving the requested streaming file, wherein the cost corresponds to the media server's resources to be consumed in serving the requested streaming file; (Krishnamurthy, Col. 5 lines 38-51)

and determining, based at least in part on the cost, whether to admit the new request for service by the media server. (Krishnamurthy, Col. 5 lines 38-51)

For claim 14, Krishnamurthy teaches, the method of claim 11 wherein said determining whether to admit the new

request for service by the media server comprises:

performing a resource availability check for the media server to determine whether the media server has sufficient available resources to service the new request. (Krishnamurthy, Col. 5 lines 38-51)

For claim 15, Krishnamurthy teaches, the method of claim 14 wherein said sufficient available resources to service the new request comprises sufficient resources available so as not to overload the media server. (Krishnamurthy, Col. 5 lines 38-51)

For claim 17, Krishnamurthy teaches, a system comprising:

server having a memory, wherein said server is operable to serve at least one streaming file to clients communicatively

coupled thereto; (Krishnamurthy, Col. 7 lines 60-67)

and an admission controller operable to receive a new request for a streaming

file to be served by said server, determine a cost to the server for serving the requested

streaming file, wherein the cost corresponds to the server's resources to be consumed

in serving the requested streaming file, and determine, based at least in part on the

cost, whether to admit the new request for service by the server. (Krishnamurthy, Col. 5

lines 37-52) .

For claim 20, Krishnamurthy teaches, the system of claim 17 wherein said admission

controller is further operable to perform a resource availability check for the server to

determine whether the server has sufficient available resources to service the new

request. (Krishnamurthy, Col. 5 lines 37-52)

For claim 21, Krishnamurthy teaches, the system of claim 20 wherein said sufficient

available resources to service the new request comprises sufficient resources available

so as not to overload the server. (Krishnamurthy, Col. 5 lines 37-52)

For claim 22, Krishnamurthy-Ueno teaches, the system of claim 17 wherein said

admission controller is further

operable to perform quality of service guarantee check for the server to determine

whether acceptance of the new request will violate, at any point in the future, a desired

quality of service provided by the server for any previously accepted requests. (Ueno,

Col. 9 line 62 to Col. 10 line 6) and(Krishnamurthy, Col. 4 lines 21-25)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

Claims 3-5, 9-10, 12-13, 16, 18-19, 26-28, 35-36 and 40 are rejected under 35

U.S.C. 103(a) as being unpatentable over the combination of Ueno et al. (U.S. Patent

5,991,811) and Krishnamurthy et al. (U.S. Patent 6,910,024).

For claim 3, Ueno-Krishnamurthy teaches, the method of claim 2 further comprising:

from the segment-based memory model associated with serving the requested

streaming media file from the streaming media server. (Ueno, Col. 11 lines 10-25, Col. 8

lines 1-11, Col. 16 line 49 to Col. 17 line 26)

Uenon fails to disclose clearly, determining a cost, Uenon does factor cost into

decisions

Krishnamurthy teaches, determining a cost (Krishnamurthy, Col. 2 lines 43-51)

Both Uenon and Krishnamurthy are in the field of Qos of data

Uenon is compatible with Krishnamurthy because Uenon factors in cost into his

implementation

It would have been obvious to on of ordinary skill in the art at the time of the

invention was made to combine Uenon with Krishnamurthy because communication are

high and Krishnamurthy have a way of charging for service. (Uenon, Col. 3 line 12) and

(Krishnamurthy, Col. 5 lines 37-55, Col. 2 lines 56-63)

For claim 4, Ueno-Krishnamurthy teaches, the method of claim 1 wherein said resource

availability check comprises:

determining a cost associated with serving the requested streaming media file from the

streaming media server. (Krishnamurthy, Col. 5 lines 38-51) The same motivation that

was utilized in the rejection of claim 3, applies equally as well to claim 4.

For claim 5, Ueno-Krishnamurthy teaches, the method of claim 4 wherein the cost

comprises:

a cost of serving the requested streaming media file either from memory or from

disk. (Ueno, Col. 11 lines 10-25, Col. 8 lines 1-11, Col. 16 line 49 to Col. 17 line 26) and

(Krishnamurthy, Col. 5 lines 38-51) The same motivation that was utilized in the rejection of claim 3, applies equally as well to claim 5.

For claim 9, Ueno-Krishnamurthy teaches, the method of claim 1 further comprising:

if determined that the streaming media server has sufficient available resources to service the new request and determined that acceptance of the new request will not violate, at any point in the future, said desired quality of service provided by the streaming media

server for any previously accepted requests, then the streaming media server serving the requested streaming media file for said new request. (Ueno, Col. 9 line 62 to Col. 10 line 6) and (Krishnamurthy Col. 4 lines 21-25) The same motivation that was utilized in the rejection of claim 3, applies equally as well to claim 9.

For claim 10, Ueno-Krishnamurthy teaches, the method of claim 1 further comprising:

if determined that the streaming media server does not have sufficient available resources to service the new request or determined that acceptance of the new request will violate, at any point in the future, said desired quality of service provided by the streaming media server for any previously accepted requests, then rejecting the new request for service by the streaming media server. (Ueno, Col. 9 line 62 to Col. 10 line 6) and(Krishnamurthy, Col. 4 lines 21-25) The same motivation that was utilized in the rejection of claim 3, applies equally as well to claim 10.

For claim 12, Krishnamurthy-Ueno teaches, the method of claim 11 wherein said

determining said cost comprises:

determining a segment-based memory model that identifies content of the media

server's memory as of a time that the new request is received; (Krishnamurthy, Col. 2

lines 43-51) and (Ueno, Col. 11 lines 10-25, Col. 8 lines 1-11, Col. 16 line 49 to Col. 17

line 26)

and using the segment-based memory model to determine whether at least a

portion of the requested streaming file is in the media server's memory. (Krishnamurthy,

Col. 2 lines 43-51) and (Ueno, Col. 11 lines 10-25, Col. 8 lines 1-11, Col. 16 line 49 to

Col. 17 line 26) The same motivation that was utilized in the rejection of claim 3, applies

equally as well to claim 12.

For claim 13, Krishnamurthy-Ueno teaches, the method of claim 12 wherein the cost

comprises:

a cost of serving the requested streaming file from memory if determined that the

requested streaming file is in the media server's memory and a cost of serving the

requested streaming file from disk if determined that the requested streaming file is not

in the media server's memory. (Krishnamurthy, Col. 2 lines 43-51) and (Ueno, Col. 11

lines 10-25, Col. 8 lines 1-11, Col. 16 line 49 to Col. 17 line 26) The same motivation

that was utilized in the rejection of claim 3, applies equally as well to claim 13.

For claim 16, Krishnamurthy-Ueno teaches, the method of claim 14 wherein said determining whether to admit the new

request for service by the media server further comprises:

performing quality of service guarantee check for the media server to determine whether acceptance of the new request will violate, at any point in the future, a desired quality of service provided by the media server for any previously accepted requests. (Ueno, Col. 9 line 62 to Col. 10 line 6) and(Krishnamurthy, Col. 4 lines 21-25) The same motivation that was utilized in the rejection of claim 3, applies equally as well to claim 16.

For claim 18, Krishnamurthy-Ueno teaches, the system of claim 17 wherein said admission controller is further operable to determine a segment-based memory model that identifies content of the server's memory as of a time that the new request is received, and said admission controller is operable to use the segment-based memory model to determine whether at least a portion of the requested streaming file is in the server's memory. (Krishnamurthy, Col. 2 lines 43-51) and (Ueno, Col. 11 lines 10-25, Col. 8 lines 1-11, Col. 16 line 49 to Col. 17 line 26) The same motivation that was utilized in the rejection of claim 3, applies equally as well to claim 18.

For claim 19, Krishnamurthy-Ueno teaches, the system of claim 17 wherein the cost comprises:

a cost of serving the requested streaming file from memory if determined that the

requested streaming file is in the server's memory and a cost of serving the requested

streaming file from disk if determined that the requested streaming file is not in the

server's memory. (Krishnamurthy, Col. 2 lines 43-51) and (Ueno, Col. 11 lines 10-25,

Col. 8 lines 1-11, Col. 16 line 49 to Col. 17 line 26) The same motivation that was

utilized in the rejection of claim 3, applies equally as well to claim 19.

For claim 26, Ueno-Krishnamurthy teaches, the method of claim 23 wherein said

determining whether to accept the

received request for service by the media server comprises:

determining a cost to the server for serving the requested streaming file, wherein

the cost corresponds to the amount of the media server's resources to be consumed in

serving the requested streaming file. (Krishnamurthy, Col. 2 lines 43-51) and (Ueno,

Col. 11 lines 10-25, Col. 8 lines 1-11, Col. 16 line 49 to Col. 17 line 26) The same

motivation that was utilized in the rejection of claim 3, applies equally as well to claim

26.

For claim 27, Ueno-Krishnamurthy teaches, the method of claim 23 wherein said

determining whether to accept the

received request for service by the media server comprises:

performing a resource availability check for the media server to determine

whether the media server has sufficient available resources to service the new request.

(Ueno, Col. 9 line 62 to Col. 10 line 6) and(Krishnamurthy, Col. 4 lines 21-25, Col. 5

lines 37-52) The same motivation that was utilized in the rejection of claim 3, applies

equally as well to claim 27.

For claim 28, Ueno-Krishnamurthy teaches, the method of claim 23 wherein said

determining whether to accept the

received request for service by the media server comprises:

performing quality of service guarantee check for the media server to determine

whether acceptance of the new request will violate, at any point in the future, a desired

quality of service provided by the media server for any previously accepted requests.

(Ueno, Col. 9 line 62 to Col. 10 line 6) and(Krishnamurthy, Col. 4 lines 21-25) The

same motivation that was utilized in the rejection of claim 3, applies equally as well to

claim 28.

For claim 34, Ueno-Krishnamurthy teaches, the computer-executable software code of

claim 29 wherein said code for

determining whether to serve a requested streaming file from the media server

comprises:

code for determining a cost to the media server for serving the requested

streaming file, wherein the cost corresponds to the amount of the media server's

resources to be consumed in serving the requested streaming file. (Ueno, Col. 11 lines

10-25, Col. 8 lines 1-11, Col. 16 line 49 to Col. 17 line 26) and (Krishnamurthy, Col. 5

lines 38-51) The same motivation that was utilized in the rejection of claim 3, applies

equally as well to claim 34.

For claim 35, Ueno-Krishnamurthy teaches, the computer-executable software of claim

29 wherein said code for determining whether to serve a requested streaming file from

the media server comprises:

code for performing a resource availability check for the media server to

determine whether the media server has sufficient available resources to service the

new request. (Krishnamurthy, Col. 2 lines 43-51) and (Ueno, Col. 11 lines 10-25, Col. 8

lines 1-11, Col. 16 line 49 to Col. 17 line 26) The same motivation that was utilized in

the rejection of claim 3, applies equally as well to claim 35.

For claim 36, Ueno-Krishnamurthy teaches, the computer-executable software code of

claim 29 wherein said code for

determining whether to serve a requested streaming file from the media server

comprises:

code for performing quality of service guarantee check for the media server to

determine whether acceptance of the new request will violate, at any point in the future,

a desired quality of service provided by the media server for any previously accepted

requests. (Krishnamurthy, Col. 2 lines 43-51) and (Ueno, Col. 11 lines 10-25, Col. 8

lines 1-11, Col. 16 line 49 to Col. 17 line 26) The same motivation that was utilized in

the rejection of claim 3, applies equally as well to claim 36.

For claim 40, Ueno-Krishnamurthy teaches, the cost-aware admission control system of

claim 37 wherein said means for

determining whether to accept the received request for service by the media

server comprises:

means for determining a cost to the server for serving the requested streaming

file, wherein the cost corresponds to the amount of the

media server's resources to be consumed in serving the requested streaming file.

(Krishnamurthy, Col. 2 lines 43-51) and (Ueno, Col. 11 lines 10-25, Col. 8 lines 1-11,

Col. 16 line 49 to Col. 17 line 26) The same motivation that was utilized in the rejection

of claim 3, applies equally as well to claim 40.

Conclusion

The prior art made of record and not relied upon is considered pertinent to

applicant's disclosure. See attached Notice of references cited (if appropriate).

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Ajay M. Bhatia whose telephone number is (571)-272-

3906. The examiner can normally be reached on M-F 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Jason Cardone can be reached on (571)272-3933. The fax phone number

for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

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